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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/510,939

08/26/2005

Stephan Rupp

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51832 7590 07/16/2007  
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EXAMINER

PRIDDY, MICHAEL B

ART UNIT

PAPER NUMBER

3733

MAIL DATE

DELIVERY MODE

07/16/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

**Application No.**

10/510,939

**Applicant(s)**

RUPP, STEPHAN

**Examiner**

Michael B. Priddy

**Art Unit**

3733

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3 and 7-11 is/are rejected.
- 7) ☒ Claim(s) 4-6 and 12-16 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____.                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date ____.  | 6) <input type="checkbox"/> Other: ____.                          |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3 and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by Christoudias (U.S. 5,817,112). Christoudias teaches a device capable of guiding a cerclage around a bone, comprising: a longitudinal shaft capable of being placed in contact with a bone, said shaft comprising a central axis, a front end and a central borehole 18 wherein, at the front end of the shaft, the central borehole 18 is angled so that the central axis of the borehole 18 forms an angle to the central axis of the shaft, and an axially displaceable, longitudinally flexible guide wire 20, said guide wire 20 comprising a front end capable of being extended out of the central borehole 18 at the front end of the shaft characterized in that at the front end of the shaft the guide wire 20 is angled with respect to the central axis of the shaft; at the front end of the shaft the central axis of the central borehole 18 encloses an angle alpha with the central axis of the shaft, wherein alpha is from about 1 degree to about 90 degrees; the guide wire 20 can be deformed elastically; the shaft includes two shaft segments, a front shaft 12 segment and a rear shaft 13 segment and the front 12 and rear 13 shaft segments may be telescoped parallel to the central axis and relative to one another, so that the

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guidewire 20 can be extended at the front end of the shaft by retracting one shaft segment into the other shaft segment.

Claims 1-3, 8-10 and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Kummer et al. (U.S. 5,851,209). Kummer et al. teaches a bone cerclage tool comprising: a longitudinal shaft 26 capable of being placed in contact with a bone, said shaft 26 comprising a central axis, a front end 18 and a central borehole 22 wherein, at the front end 18 of the shaft 26, the central borehole 22 is angled so that the central axis of the borehole 22 forms an angle to the central axis of the shaft 26 and an axially displaceable, longitudinally flexible guide wire 16, said guide wire 16 comprising a front end capable of being extended out of the central borehole 22 at the front end of the shaft 26 characterized in that the front end of the shaft the guide wire 16 is angled with respect to the central axis of the shaft 26, the central borehole 22 enclosing an angle alpha with the central axis of the shaft 26, wherein alpha is from about 1 degree to about 90 degrees; wherein the guide wire 16 can be deformed elastically; the shaft 26 is angled at its front end, so that the central axis, at the front end 18 of the shaft 26, encloses an angle beta between about 1 degree and about 90 degrees with the central axis of the remaining length of the shaft 26.

Concerning the language of claim 8 reciting that the "guide wire can be extended from the front end of the shaft by means of a sliding element, which sliding element can be shifted coaxially with the central axis of the shaft," it is noted that this claim only functionally recites a sliding element and this functional element is therefore not

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believed required to meet the limitations of the claim. Nevertheless, ring 24 is pushed or slid proximally and distally to move guide wire 16.

Concerning the language of claim 9 reciting that the "guide wire may be extended at the front end of the shaft by means of a rack mechanism," it is noted that this claim only functionally recites a sliding element and this functional element is therefore not believed required to meet the limitations of the claim.

#### ***Allowable Subject Matter***

Claims 4-6 and 12-16 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael B. Priddy whose telephone number is 571-272-2243. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on 571-272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Michael B. Priddy

*Michael B. Priddy*  
July 3, 2007

  
EDMUND C. ROBERT  
SUPERVISOR, PATENT EXAMINER